elaborate arguments of Surrogate Fowler in his learned work on "Real Property Law of the State of New York." It is to be noted also that the learned Surrogate does not concede that the decision in *Matter of Wilcox* is the final word on this question, contending that the decision itself might be supported on other grounds, and, indeed, the learned chief judge of the Court of Appeals himself admits that his decision could be based upon the invalidity of the precedent trust as well as upon the remote vesting of the gift over. But, on the other hand, the learned chief judge expressly recognizes the existence of the Rule against Remoteness and all his reasoning is directed to showing the invalidity of the gift over because it violates the Rule against Remote Vesting.

As Mr. Gray points out in his classical work on the Rule against Perpetuities, there is no part of the law in which the reasoning is so mathematical in its character as the Rule against Perpetuities, and yet, contrary to the popular maxim that figures never lie, "there is something in the subject which seems to facilitate error." This statement finds fresh illustration in our experience with the New York Rule against Perpetuities, or, perhaps one must now say, Rules against Perpetuities. There has been no more fruitful source of litigation than this rule, and there has been no more serious and treacherous obstacle to prevent the carrying out of the entirely reasonable and proper intentions of testators. Our experience with this rule is also an interesting illustration of the futility of any attempt to make the law definite and certain by codification. The object of the revisers was to establish a system of law "simple, uniform and intelligible," and one which might be "sufficiently understood by a *few days of diligent study.*" What has been the result? The system of law established by the Revised Statutes has now been in force eighty-two years and not even this long period of time has been sufficient to settle all the questions that may arise under it. Mr. Chaplin's first edition, published twenty years ago, has already become antiquated. His second edition, while throwing much additional light upon the scope and meaning of the New York Rule against Perpetuities, suggests questions which are still to be answered, and we may anticipate during the period of the next twenty years an equally fruitful crop of litigation.

G. F. Canfield.

THE UNDERLYING PRINCIPLES OF MODERN LEGISLATION. By W. JETHRO BROWN, LL.D., LITT. D., Professor of Law in the University of Adelaide. London: JOHN MURRAY. 1912. pp. xx, 331.

Something like a million men and women pour into the lower end of Manhattan Island every morning and are poured out again upon the surrounding territory every evening. The consequent difficulties of transportation are enormous. It is probably true that the time will never come when the facilities will be adequate to the need, or will enable even a majority of the teeming throng to find seats in the cars. Most of the hard-working stenographers and clerks, therefore, are daily confronted with the choice of avoiding the rush by coming early and staying late, which would add from two to four hours to their day's work, or enduring the discomfort of hanging to a strap in a perspiring and relentless crowd.

In the name of individual liberty, Professor Brown would have

the state make the choice instead of the strap-hanger. He would impose a penalty for boarding a car in which the seats are already taken. His reasons are thus stated at page 63 of his treatise:

"The liberty of an individual may be promoted by restrictions that "the State imposes upon him in his own interests. In a later chapter, "I shall refer to the *abuse* of this proposition. At present, I wish to "illustrate the truth of the expressive paradox of Rousseau that a man "may be *forced* to be free. In a humble sphere, the municipal legisla- "tion of our time affords some familiar examples. A by-law pre- "scribes a penalty for boarding a tram which is already full. A "would-be passenger, compelled to wait in the rain until the next car "passes, may be tempted to complain that his liberty is thereby "infringed. If, however, he will employ the interval in profitable "reflection, he may learn to take a saner view of things. While the "by-law prevents him from riding in one car, it ensures that he shall "be free from being sat upon in the next car, and possibly from being "deposited in the mud as the result of a break-down. More important "still, the by-law serves to protect him from being exploited in the "interests of a tramway company that would like to be allowed to run "one car where it ought to run two. We have all heard of the "suburban strap-hangers of New York; and we do not envy their "freedom to pass a not inconsiderable portion of their lives in clinging "to a strap."

We may be very certain that the strap-hangers of New York would hotly resent any such legislation in this city and that nothing that Professor Brown says would convince them that it would be either promotive of their liberties or conducive to their happiness. Indeed, what he says is not truly convincing on either point. It is no argument to urge that restricting a man's liberty may promote it; restriction might promote his comfort, but it could not promote his liberty, and the proposition is a mere contradiction in terms which only confuses the issue. It is no argument to point out that legislation will free the passenger from being sat upon and possibly from being deposited in the mud as the result of a break-down. We may readily admit that the passenger will receive *some* benefit from the restriction of his liberty,—few things are wholly evil,—but that is no answer to the objection that he has a proper right to determine for himself whether he wants that benefit, or that he may lose other and more important benefits. It is no argument to say that the passenger will not be exploited in the interests of a company that would like to run only one car when it ought to run two; the remedy for that wrong is not to restrict the liberty of the passenger, but to punish the wrong-doing company. It is apparent, therefore, even from this brief summary, that the considerations which the learned author advances do not support his thesis.

Professor Brown's book is an interesting and suggestive discussion of the problems of legislation as a means to social progress; but it covers so many topics and ranges over so broad a territory that it is impossible in the limits of space allotted to this review to do more than touch upon its dominating characteristics. The passage which we have cited gives a typical illustration of his spirit and method. In general his proposals are more temperate than those of many who are engaged in the active social work of the time. He recognizes, for example, rather more clearly than is usual, the perils of relieving physical hardship at the expense of the moral fibre (see chap. V, "The

Truth in Laissez Faire"), and consequently his book is refreshingly filled with the sturdy British spirit of self-reliance. Even so, however, it illustrates very precisely the gravest peril of our time,—the evil of misdirected effort arising from misdirected thinking.

To revert to our citation as an example, it shows that the author entertains a profound misconception as to the nature of liberty and the possibility of enhancing it by restricting it, and that his misconception has led him in at least one instance to precisely the wrong solution of a problem which he would solve. Instead of advising an active and vigilant municipal government that would first throw safeguards about the granting of public franchises and would thereafter compel the grantees to fulfill the duties which their franchises create, he would limit the freedom of the people whom he is trying to protect. He would deprive them of the right to decide for themselves in matters of their own private concern at the same time that he would fail to enforce the rights which they have against the public service corporation. Thus he missed the remedy, so far as a remedy is possible, for a real evil, and he missed it because he did not do his thinking correctly.

A grave problem has been forced upon the world with amazing intensity and startling suddenness,—the problem of the duty of the state to care for its citizens by remedial, as well as by preventive, effort. There are perils in over-doing and there are perils in under-doing. To guide the state aright between these perils demands the highest and best that any man has to give. We do not lack volunteers in the work of social betterment, but we do lack that accurate thinking without which our most humane efforts must remain substantially ineffectual. We are so prone to accept paradoxes, we are so acquiescent in superficial phrases, limited theories, and temporary results, that we go wrong through sheer want of reason. We only multiply the evils which we would remedy, and postpone the day of curative achievement. It is unfortunate that, interesting and suggestive as it is, the book under review has not made a more substantial contribution to our supreme need.

Everett V. Abbot.